



## Trial Court of the Commonwealth District Court Department

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CLERK-MAGISTRATES IN BARNSTABLE, BRISTOL, DUKES, FRANKLIN, HAMPDEN, HAMPSHIRE AND NANTUCKET COUNTIES: *Please review and implement this memorandum immediately. It includes procedures that are newly effective in your court on MONDAY, APRIL 1, 2002 and that affect all civil complaints seeking money damages, and all summary process actions, filed on or after that date.*

### MEMORANDUM

TO: All District Court judges and clerk-magistrates  
FROM: Chief Justice Zoll  
DATE: April 1, 2002  
SUBJECT: **Implementation of the Civil One Trial System**

Effective April 1, 2002, the pilot civil “one trial” system that has been in operation for the past several years in Berkshire, Essex, Middlesex and Norfolk counties will go into effect also in the District and Superior Courts of Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties. With the addition of these seven counties, the one trial system will be in effect in 11 of the Commonwealth’s 14 counties – everywhere except in Plymouth, Suffolk and Worcester counties.

This expansion was accomplished by St. 2002, c. 70, which was enacted on March 26, 2002 and signed by the Governor on March 28. We all welcome the expansion of the civil one trial system into the additional seven counties. The short timeframe between the statute’s enactment and its coming into effect on April 1, 2002 has precluded a more extended preparation period. Nonetheless, I am confident that we can implement the statute promptly in the seven new counties, and that the one trial system will prove as popular and successful there as it has in the first four counties. I have asked our Committee on Civil Proceedings, chaired by Hon. Fredric D. Rutberg (S. Berkshire), to help provide additional guidance and training as we go forward.

**Because the new system is effective on April 1, 2002 in the additional seven counties, it is important that the clerk-magistrates of those courts ensure that their office staff members who will be responsible for implementing the new system familiarize themselves with the enclosed materials and forms promptly.** It is particularly important to understand and implement the new “Statement of Damages” form, since the bar’s use of that form after April 1, 2002 is essential to making the new system work. Such clerks’ offices are requested to make photocopies available to attorneys of the one-page “A Brief Outline of the Civil One Trial System” (p. 4), the civil one trial statute (pp. 20-27), Standing Order 1-98 (pp. 28-33), and the “Statement of Damages” form (p. 33).

For judges and clerk-magistrates in Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties, the purpose of this memorandum is to ensure a successful transition to the new civil one trial system by: (1) providing an overview of the new system, (2) explaining how the new system is to be implemented, and (3) transmitting copies of the new statute, standing order, and forms, along with a one-page information sheet that can be distributed to members of the bar

For judges and clerk-magistrates in Berkshire, Essex, Middlesex and Norfolk counties, where the one trial system has been successfully in effect since September 30, 1996 (in Middlesex and Norfolk) or September 1, 2000 (in Berkshire and Essex), you will not see any changes after April 1, 2002 in the way that civil cases are already being handled under the one-trial system. I am distributing this memorandum to you because it brings together in one place information that was distributed at several different times, and sometimes in slightly different form, in the past. There are no significant differences from the information and procedures that were previously distributed to you.

For judges and clerk-magistrates in Plymouth, Suffolk and Worcester counties, the one trial system is not yet in effect and the remand/removal system continues as in the past. I am distributing this memorandum to you for your general information.

Our experience with the civil one trial system over the last several years has been very positive and we look forward to its successful implementation in the courts of the seven additional counties. The central features of the new system are a single trial in civil cases, and the availability of civil jury trials in the District Court. As you know, this is a goal we have pursued for many years, and we look forward to its future statewide expansion.

It is important to note, however, that while the creation and operation of the civil jury sessions is central to the new system, it will *not* present our greatest challenge. As we have seen in the counties that already have the new system, the District Court is fully able to conduct civil jury trials that meet the highest expectations of the law, the bar and the litigants we must serve. We know, however, that the actual number of such trials will be low. (In those counties where the new system has been in effect, jury trials have been required in fewer than 1% of total cases disposed.) As always, the real challenge will be in the management of the cases so that unnecessary delay is minimized, cases are not needlessly added to the trial lists, and cases that do require trials are reached promptly.

Thank you for your assistance in implementing this important step in the history of the District Court, and thanks also to those judges, clerk-magistrates and court staff who have coordinated and monitored the new system, and made it work so successfully, where it is already in effect.

I am deeply appreciative of the full consideration extended to this proposal by Governor Jane Swift with the assistance of her Chief Legal Counsel Steven D. Pierce, and by both branches of the Legislature. Senator Robert S. Creedon, Jr. and Representative David T. Donnelly, as co-chairs of the Committee on the Judiciary, were pivotal in this effort, advocating with the help of their able, respective staffs.

I also want to express a special word of gratitude from all of us to John M. Connors, former Deputy Court Administrator in this office. John was the major craftsman of the civil one trial system, as he was for the criminal one trial system a decade ago. No challenge diluted his idealism or exceeded his intellect. It is rare that one person is able to so change the face of our court system for the better, and rarer still to be remembered with such professional respect and personal admiration by everyone with whom he has worked.

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# A BRIEF OUTLINE OF THE CIVIL ONE TRIAL SYSTEM

## in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties

St. 1996, c. 358, as amended by St. 1998, c. 157, St. 2000, c. 142,  
and St. 2002, c. 70 (effective April 1, 2002)

The new one trial system:

1. **Cases affected.** Applies to civil money damage actions and summary process actions in District and Superior Courts in all counties except Plymouth, Suffolk and Worcester.
2. **Effective dates.**
  - In Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire, and Nantucket counties, applies to all such actions commenced on and after April 1, 2002.
  - In Berkshire and Essex counties, it has been in effect since September 1, 2000.
  - In Middlesex and Norfolk counties, it has been in effect since September 30, 1996.
  - In all 11 counties, it will operate until August 31, 2004, unless extended.
3. **Basic idea: one trial.** Eliminates the remand/removal procedure and appeal to Superior Court for jury trial, and provides for one trial in either District or Superior Court, with a jury if properly requested.
4. **\$25,000 dividing line, except for summary process.** Requires that civil money damage actions must be commenced and heard:
  - in District Court if there is no reasonable likelihood the plaintiff will recover an amount in excess of \$25,000, or
  - in Superior Court if there is no reasonable likelihood that plaintiff will recover an amount equal to or less than \$25,000.
  - Permits summary process actions to be brought either in District Court or Superior Court, without regard to amount of monetary damages.
5. **How is the \$25,000 dividing line determined?** In civil money damage actions, provides that:
  - Plaintiffs must file a detailed Statement of Damages with the complaint.
  - Court must dismiss any action that does not meet that court's jurisdictional amount.
  - Each party is entitled to a hearing prior to such dismissal.
  - A plaintiff whose case has been dismissed may appeal to an Appeals Court Single Justice.
  - The statute of limitations is automatically extended for 30 days to permit refile of a dismissed action.
6. **Case management.** Requires a pretrial conference and pretrial hearing before a case can be put on a trial list. District Court Standing Order 1-88 ("time standards") is inapplicable, and detailed case management provisions are set out in District Court Standing Order 1-98.
7. **Jury sessions.** Authorizes the Chief Justice of the District Court to establish civil jury sessions and assign judges to those sessions. District Court civil jury trials are to utilize the same general trial procedures as in Superior Court.
8. **Appeal.** Permits appeal of District Court cases to the Appellate Division, followed by appeal to the Appeals Court.
9. **Equity jurisdiction.** Provides full equity jurisdiction to the District Court in money damage cases.

## **QUESTIONS & ANSWERS ABOUT THE CIVIL ONE TRIAL SYSTEM**

The purpose of this section is to provide an analysis of the pilot one trial system for civil actions, and to clarify some aspects of its orderly implementation. Many of the underlying statutory provisions are straightforward and unambiguous, although some are open to interpretation. The interpretations provided in this memorandum are subject to change as issues are further clarified and as they are addressed in appellate decisions.

### **Overview**

#### **1. Where can one find the text of the civil one trial legislation?**

The civil one trial legislation consists of a series of session laws that have not been codified in the General Laws. The primary “civil one trial” statute is St. 1996, c. 358. Its original expiration date was subsequently extended by St. 1998, c. 157. It was later extended, amended, and expanded to two additional counties by St. 2000, c. 142. Finally, it was expanded to seven additional counties by St. 2002, c. 70. *The integrated text of c. 358, as amended, may be found at pp. 20-27.*

#### **2. In a nutshell, what does the civil one trial legislation do?**

The central feature of the new system is the introduction of civil jury trials in the District Court, and the abolition of the current remand/removal system by which cases are transferred back and forth between District and Superior Court, or appealed for jury trial in Superior Court (St. 1996, c. 358, §§ 1-2, 9). Under the new system:

- ***Civil cases seeking money damages*** must be filed either in District Court or Superior Court, depending on the amount that is reasonably likely to be recovered, and they proceed to conclusion in that same court, with a single trial available either before a judge or a jury. Cases with a reasonable likelihood of recovery over \$25,000 must be filed in Superior Court and stay there to conclusion. Cases involving claims of \$25,000 or less must be filed in District Court and stay there to conclusion, with appeal on issues of law to the Appellate Division.
- ***Summary process (eviction) cases*** may be filed either in District Court or Superior Court, regardless of the amount claimed, and proceed to conclusion in that same court, with a single trial available either before a judge or a jury. In District Court, appeal on issues of law is available to the Appellate Division.

#### **3. Which courts are involved?**

The new civil one trial system was implemented in all District and Superior Courts in Middlesex and Norfolk counties as of September 30, 1996, and subsequently expanded to Berkshire and Essex counties on September 1, 2000. It has now been extended to Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties as of April 1, 2002. As a consequence, it is now in effect in 11 of the Commonwealth’s 14 counties – everywhere except in Plymouth, Suffolk and Worcester counties.

4. **What cases are covered?**

The new procedures apply to all civil actions “otherwise subject to transfer, retransfer, removal and appeal” under G.L. c. 231, §§ 97-107. (St. 1996, c. 358, § 2.) In the District Court, this includes all civil actions seeking money damages.

The new system also applies to summary process (eviction) actions. (St. 1996, c. 358, § 10.) See questions 37-39, below.

5. **When does the new system begin and end?**

The civil one trial system applies to actions commenced:

- on and after September 30, 1996 in Middlesex and Norfolk counties.
- on and after September 1, 2000 in Berkshire and Essex counties.
- on and after April 1, 2002 in Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties.

The civil one trial system will remain in effect in all 11 counties until August 31, 2004, unless extended. Cases pending on that date will continue to conclusion under the new system if a jury or jury-waived trial has been elected by that date (St. 1996, c. 358, §§ 13-14). If the new system continues to operate successfully, we will request the Legislature to make it permanent and extend it statewide.

**Jurisdictional Amount**

6. **What determines whether a case should be commenced in the District or Superior Court?**

Civil actions must be filed in the District or Superior Court based on a \$25,000 jurisdictional dividing line. Specifically, a case is:

- exclusively within **District Court** jurisdiction if there is **no reasonable likelihood that the plaintiff will recover damages of more than \$25,000**, and
- exclusively within **Superior Court** jurisdiction if there is **no reasonable likelihood that the plaintiff will recover damages of \$25,000 or less**.

Thus, before filing a money damages action, the plaintiff must determine the proper court, based on jurisdictional amount. Three points about jurisdictional amount should be noted:

- The question of jurisdictional amount has *not* emerged as a contentious point. In the first three years under the new system, only 146 cases were dismissed based on jurisdictional amount. This is less than 1% of the total number of dispositions during that time.
- The issue of jurisdictional amount is the first matter encountered by the bar when the civil one trial statute is first implemented in a county. It is important therefore that clerk’s office personnel clearly understand the law and procedures around this issue to minimize any confusion and ensure a smooth transition to the new system (see Questions 1-29).

- After the civil one trial statute was amended in 2000, the issue of jurisdictional amount *does not apply to summary process cases*, which may be filed either in the District or Superior Court regardless of the amount of damages sought (see Question 37, below).

Current laws regarding *venue* are not affected by the civil one trial statute.

**7. How does one determine the amount reasonably likely to be recovered?**

The law requires the plaintiff to file along with the complaint a Statement of Damages explaining the basis for the amount of damages sought. (St. 1996, c. 358, § 5.) A “Statement of Damages” form (see p. 33) has been promulgated for use in the District and Superior Courts to satisfy this requirement.

Note that this requirement is *not* satisfied by filing the old “Statement of Damages” form that was required by Dist./Mun. Cts. Supp. R. Civ. P. 102A. The old Rule 102A “Statement of Damages” form is no longer required in counties that are operating under the new procedure. Rule 102A facilitated removal of cases to Superior Court under the old remand/removal system and is thus inapplicable to counties that are under the civil one trial system.

**8. What if the plaintiff fails to file the Statement of Damages?**

The law provides that the clerk-magistrate must not accept a case for filing if the required Statement of Damages is not included. (St. 1996, c. 358, § 5.)

The clerk’s role on this issue is limited. If the plaintiff’s complaint is accompanied by a completed “Statement of Damages” form, the clerk should accept the complaint for filing. The clerk should not scrutinize the form in an effort to determine whether it is “sufficiently” detailed or itemized so as to permit or deny filing of the action.

On the other hand, if a case arrives with no “Statement of Damages” form (or only the old “Statement of Damages” form under Rule 102A), the clerk should explain the statutory requirement to counsel. If counsel is at the counter, this can be done easily. If counsel has mailed in the complaint and filing fee, the clerk may call counsel to explain the requirement. If the clerk returns the complaint and filing fee to counsel, the clerk should include an explanation of the requirement and a copy of the required “Statement of Damages” form.

**9. What if there is a “Statement of Damages” form, but it has not been properly completed?**

The clerk should not refuse to accept the case for filing, but rather should bring it to the attention of a judge. The judge may decide to issue an Order for Judgment of Dismissal for Want of Jurisdictional Amount, under the procedure set forth in Question 17, below, dismissing the complaint because of the plaintiff’s failure to file an adequate “Statement of Damages” form as required by the law.

**10. What if there is a “Statement of Damages” form, but it indicates that the plaintiff is seeking damages in an amount *over* the \$25,000 District Court jurisdictional limit?**

The clerk may not refuse to accept a case for filing if the Statement of Damages is included, even if the amount of damages sought is over \$25,000. However, if the plaintiff or plaintiff’s counsel is at the counter, the clerk should point out the likelihood that the case will be dismissed, since the \$25,000

limit is jurisdictional and therefore non-waivable. This is best done by providing the plaintiff with a brief summary of the law. *The outline on page 4 of this memorandum may be photocopied by the clerk's office for such use.*

If the plaintiff has attempted to file the complaint by mail, and the Statement of Damages indicates a claim for damages above \$25,000, the clerk may consider contacting the plaintiff to alert him or her to the likelihood of dismissal. However, this approach could jeopardize the plaintiff in the unlikely event that the relevant statute of limitations expires while the clerk is attempting to contact the plaintiff. Thus, if the plaintiff or counsel is not promptly contacted, the case should simply be accepted and filed.

**11. Does the jurisdictional amount apply to counterclaims?**

Apparently not. The law states that the court must base its jurisdictional decision on the required Statement of Damages filed by the plaintiff, and this Statement of Damages must accompany “any complaint or other pleading which commences [a] civil action.” (St. 1996, c. 358, § 5.) The law is silent regarding the amount of damages sought by means of a counterclaim.

**12. If the original claim amount is within District Court jurisdiction when the action is commenced, what if the plaintiff later amends the complaint to seek an amount in excess of District Court jurisdiction?**

The statute discusses only the Statement of Damages that must accompany the complaint or other pleading that commences a civil action. However, any attempt to amend the complaint should be accompanied by an amended Statement of Damages so that District Court jurisdiction can be determined. Presumably an *increase* in damages that exceeded the jurisdictional amount would require dismissal of the action. It appears that an amendment that *reduces* the amount of damages sought to \$25,000 or less could avoid a dismissal that would otherwise be necessary if the original amount sought exceeded \$25,000.

**13. Does the District Court have the authority to award a judgment in excess of \$25,000?**

Yes. There is nothing in the new law or elsewhere that limits the District Court's authority to award damages in excess of \$25,000, notwithstanding the threshold “reasonable likelihood” test. In other words, it appears to be possible for a plaintiff to win a judgment in District Court for an amount in excess of \$25,000 even though there was no reasonable likelihood of such recovery based on the Statement of Damages filed with the complaint.

If such a recovery were far over \$25,000, the defendant might attempt to challenge the court's initial jurisdiction, alleging that the amount of such a judgment is evidence that there *was* a reasonable likelihood of recovery in excess of \$25,000 at the time of filing, and therefore the case was initially outside the District Court's jurisdiction. Any ruling on such a challenge would be appealable to the Appellate Division, which has indicated that it would not favor such an argument where there was inherent uncertainty in the amount of damages. *Cavanaugh v. Athena Equip. & Supply Co.*, 2000 Mass. App. Div. 254.

**14. Does the new law confer general equity powers on the District Court in these cases?**

Yes. The statute states that in civil actions governed by the one trial system the District Court “shall have the same equitable powers and jurisdiction as is provided for the superior court pursuant to” G.L. c. 214. (St. 1996, c. 358, § 3.) It is important, however, to note that:

- Under this provision, general equity powers are available in the District Court only in those civil actions that are governed by the new law – *i.e.*, civil actions that include a claim for money damages, or summary process cases. The District Court has *not* been granted general equity jurisdiction over civil actions seeking *only* equitable relief without money damages. *Herman v. Home Depot*, 436 Mass. 210, 763 N.E.2d 512 (2002).
- The Appellate Division has also determined that this provision:

“grants the District Court equitable powers in cases ordinarily within District Court jurisdiction, but the statute does not otherwise expand District Court jurisdiction. The Superior Court retains exclusive jurisdiction of those statutory causes of action heretofore assigned to it. See, for example, G.L. c. 258 (Massachusetts Tort Claims Act); G.L. c. 231A (Declaratory Judgments); and G.L.c. 214, § 1B (Invasion of Privacy).”

*Brossi v. Fisher*, 1999 Mass. App. Div. 99, *aff’d* on other grounds, 51 Mass. App. Ct. 543, 747 N.E.2d 714 (2001). See also *Ravnikar v. Bogojavlensky*, 2001 Mass. App. Div. 197 (provision does not grant District Court jurisdiction over invasion of privacy claims); *St. Mary’s Credit Union v. Mavretic*, 1999 Mass. App. Div. 159 (provision grants District Court jurisdiction over equitable interpleader).

**Dismissal for Want of Jurisdictional Amount**

**15. How is the jurisdictional requirement tested?**

The new law sets forth a procedure by which the court can determine whether the jurisdictional amount requirement has been met. If it has not been met, the action must be dismissed.

**16. After a case is filed, how can dismissal occur?**

A jurisdictional defect can be raised at any time while a case is in progress and even after judgment, and cannot be waived by an opponent’s failure to raise it. However, the District Court has adopted a procedure by which dismissal can occur as an initial event under the new system.

This procedure involves prompt review by the clerk-magistrate of each incoming case and Statement of Damages at the time it is filed. If the amount claimed is more than \$25,000, or if it appears obvious from the Statement that there is a reasonable likelihood of damages of more than \$25,000, the case should be immediately referred to a judge. *Clerks should establish a system for reviewing all incoming cases and making appropriate references to a judge.*

**17. How does the judge determine whether to order dismissal?**

If a case is referred to a judge for possible dismissal due to a defect in the jurisdictional amount, the judge should make an initial determination based on the “reasonable likelihood” test by reviewing the Statement. If the judge determines that there is no reasonable likelihood of damages of more than \$25,000, nothing is required and the case will proceed in the usual way.

If the judge determines that there *is* a reasonable likelihood of damages over \$25,000, the judge should promptly order that a conditional Order for dismissal be entered and sent to the parties. *A sample “Order Nisi for Dismissal for Want of Jurisdictional Amount” form is reproduced at p. 34.* It includes a notice to the parties of their statutory right to file a response and to request a hearing on the issue of dismissal, and the time period within which such response and hearing request must be filed.

If a hearing is requested before defendant’s answer is due, the defendant should not be required to serve and file an answer until after the issue is resolved. If, after hearing, no final judgment of dismissal is entered, the case will continue and the judge must set a date by which the answer must be served and filed.

If the plaintiff does not request a hearing in response to the court’s conditional Order for dismissal, or if the jurisdictional issue is resolved against the plaintiff after hearing, the clerk should enter a judgment of dismissal and (as Mass. R. Civ. P. 77(d) requires) send the parties notice of entry of judgment. *A sample “Notice of Entry of Judgment of Dismissal for Want of Jurisdictional Amount” form is reproduced at p. 35.*

**18. Why should this initial procedure for possible dismissal proceed immediately after filing of the complaint and not wait until after defendant’s answer is filed?**

The procedure outlined above is intended for the dismissal of cases in which the likelihood of damages over \$25,000 is obvious. For such cases, there is no reason to wait for defendant’s answer to be filed. First, in a large percentage of cases in the District Court, no answer is filed. If dismissal occurs after default procedures are begun, those procedures will be rendered void. Second, in cases that are appropriate for early dismissal, the defendant should not be required to prepare and file an answer. Third, as explained below, the defendant will receive adequate information about the case, and will have an opportunity to be heard regarding dismissal, even if the matter proceeds before service of the complaint.

**19. How will the court be able to send the defendant a copy of the conditional Order for dismissal if no answer has been filed?**

The “Statement of Damages” form requires the plaintiff to provide the defendant’s address.

**20. Can the defendant file a motion to challenge the court’s jurisdiction on the basis of jurisdictional amount?**

Yes. Since jurisdiction can be raised at any time, the defendant is entitled at any time to file a motion requesting that the complaint be dismissed based on the amount of damages. This should be relatively rare, since the routine procedure set forth above in Question 17 will identify most cases in which the jurisdictional amount is an obvious issue and will result in an early resolution of that issue.

**21. Can the defendant challenge the court’s jurisdiction on the basis of jurisdictional amount in his or her answer?**

The law provides that “the defendant may file with his answer a statement specifying in detail the potential damages which may result if the plaintiff prevails” (St. 1996, c. 358, § 5). A defendant might do this to argue that the case is reasonably “worth” more than the District Court’s \$25,000 limit, and therefore outside the District Court’s jurisdiction. While such a statement is relevant to the court’s decision on this issue, it would appear that an actual challenge to jurisdiction by the defendant should be made by motion. Note that the routine procedure set out in Question 17 above does not require a motion, and will also provide the defendant with notice and the right to be heard on the issue of dismissal.

**22. What if the issue of dismissal is not raised and resolved prior to the defendant’s required time for answer? Should default procedures go forward?**

Any procedures in a case will be rendered moot if dismissal based on jurisdiction later occurs. Accordingly, unless the court has determined that jurisdiction is proper prior to the time the defendant’s answer is due, the clerk should review the Statement of Damages before proceeding to enter a default or default judgment, or refer the case to a judge for an assessment of damages. Where it appears doubtful that the jurisdictional test is met, the matter should be referred to a judge. The judge can then decide whether to issue a conditional Order for dismissal and give notice to the parties and an opportunity for a hearing, as in the preliminary hearing discussed above in Question 17, or to let the matter proceed because jurisdiction is proper.

If prior to answer the court has already determined that jurisdiction is proper (under the preliminary procedure set forth in Question 17), the clerk can proceed in the usual fashion regarding default, assessment of damages and entry of default judgment.

**23. What if an action is commenced within the statute of limitations, but dismissed after the statutory time limit has expired?**

The new law specifically provides that in such circumstances the plaintiff will have 30 days after the date of the notice of the dismissal within which to recommence the action in Superior Court, notwithstanding the expiration of the statute of limitations (St. 1996, c. 358, § 7).

### **Appeal of Dismissal**

**24. Can a judgment of dismissal be appealed?**

Yes. The law provides that the plaintiff may appeal the dismissal of an action for want of jurisdictional amount to a single justice of the Appeals Court. (St. 1996, c. 358, § 6). The decision of that court is final.

The plaintiff must claim the appeal within seven days “after the date of the notice of dismissal.” This has been interpreted by the Appellate Division as the date when such notice is received. *Melo v. General Elec. Capital Auto Lease*, 1999 Mass. App. Div. 269.

The notice of appeal must be filed with the clerk of the dismissing court, who must then forward to the Appeals Court specific documents in the case – namely, the original complaint, the Statement of

Damages and any other statements from any party specifying potential damages (*e.g.*, a defendant's statement in the answer), the judge's written statement of reasons justifying the dismissal, and "any other documents on file relevant to the appeal." A sample "*Transmittal of Appeal*" cover sheet for sending the appeal to the Appeals Court is reproduced at p. 36. Upon receipt of the appeal, the clerk of the Appeals Court must schedule a hearing and notify the parties.

Of course, the plaintiff can opt to avoid such appeal (or abandon it) and recommence the action in Superior Court.

**25. What happens to the case pending this appeal?**

The "dismissing court" may, with or without a motion, "issue an order or process to preserve the rights of the parties pending appeal" (St. 1996, c. 358, § 6). This presumably includes authority to order an attachment in favor of the plaintiff, either *ex parte* or after hearing consistent with the applicable rules. The single justice of the Appeals Court also "may enter or revoke such order or process."

**26. If the court rules that an action should *not* be dismissed, can the defendant appeal?**

Appeal to the Appeals Court single justice under the new law appears to be limited to an order of dismissal. Thus, a defendant aggrieved by a decision *not* to dismiss would appear to be limited to an appeal on this issue to the Appellate Division after final judgment in the case. There is no interlocutory appeal available in the District Court as of right. The aggrieved defendant could request that the judge report the issue to the Appellate Division under Mass. R. Civ. P. 5, but such reports are discretionary.

**Recommencement After Dismissal**

**27. What if a case is dismissed in Superior Court even though the stated damages are more than \$25,000 and the plaintiff then recommences the same case in District Court?**

In such an instance, the District Court should consider the Superior Court decision on jurisdiction to be binding and should consider the case to be within District Court jurisdiction, regardless of the amount of damages claimed.

**28. What about the filing fee in a case recommenced in the District Court following a Superior Court dismissal for defect in the jurisdictional amount?**

The new law provides that in such a case, no filing fee is required from the plaintiff (St. 1996, c. 358, § 5). In such cases, District Court clerks should require a certified copy of the Superior Court judgment of dismissal.

**29. Is there another purpose for requiring a certified copy of the Superior Court judgment of dismissal other than for waiver of the filing fee?**

Yes. The certified copy of the Superior Court judgment will alert the court that the case is not subject to dismissal, even though the amount of the damages claimed is over \$25,000. *For this reason, it is important for the District Court clerk to place the Superior Court judgment in the case file.*

## Civil Jury Trials

**30. How does a party claim jury trial?**

The law provides that District Court jury trials must be sought by means of a “demand” filed and served on opposing parties as required by Mass. R. Civ. P. 38 (either as part of a pleading or as a separate filing), and that failure to comply with that rule “shall constitute a waiver by that party of trial by jury” (St. 1996, c. 358, § 8, ¶ 2).

**31. Does a jury claim affect normal pretrial procedures?**

No. The law provides that:

“[i]n any case in which a party has filed a timely demand for a jury trial, the action shall not be designated upon the docket as a jury action until after the completion of a pretrial conference, a hearing on the results of such conference and until the disposition of any pretrial discovery motion and compliance with any order of the court pursuant to such motions” (St. 1996, c. 358, § 8, ¶ 3).

Pretrial procedures in such cases are by the Massachusetts Rules of Civil Procedure and by Standing Order 1-98 (reproduced at p. 28). Standing Order 1-98 requires case management conferences, and, if necessary, pretrial conferences. (See Questions 33-34, below).

**32. What about the required “time standards” procedures under Standing Order 1-88?**

District Court Standing Order 1-88, which imposes “time standards” requirements, including dismissal for failure of a plaintiff to claim trial in cases not disposed within one year, *does not apply to actions governed by the new system*. It has been replaced by Standing Order 1-98, which provides detailed procedures for management of these cases.

**33. Where – and by whom – are the civil jury trials conducted?**

Civil jury trials under the civil one trial system are to be provided in specific courts designated in each county by the Chief Justice of the District Court (St. 1996, c. 358, § 8, ¶¶ 4 & 11). The Regional Administrative Judges will assign judges to these sessions.

In the seven counties where the law is newly effective, jury session locations will be announced shortly, and more information will be provided regarding the transmission of cases to these jury sessions. Given the start-up date and time frames involved, jury trials in civil actions will generally not be required for some time in these seven counties. In the meantime, however, jury trials may be required in summary process cases. Those trials should be scheduled at appropriate times in the existing criminal jury sessions in those counties.

**34. Are there any provisions regarding the actual conduct of District Court civil jury trials?**

Yes. The law provides that a judge presiding over a District Court civil jury session:

“shall have and exercise all powers and duties which a justice sitting in the Superior Court Department has and may exercise in the trial and disposition of civil cases

including the power to report questions of law to the Appeals Court” (St. 1996, c. 358, § 8, ¶ 8).

Please note that this provision:

- probably should be read to require District Court judges in these sessions to make findings and rulings in each case in which judgment is entered after a jury-waived trial, in accordance with Mass. R. Civ. P. 52, as is required of Superior Court judges.
- does not authorize District Court judges in these sessions to award costs or attorney’s fees under G.L. c. 231, § 6F for wholly frivolous claims. *Brossi v. Fisher*, 51 Mass. App. Ct. 543, 747 N.E.2d 714 (2001), aff’g 1999 Mass. App. Div. 99.

The law also provides that:

“[t]rials by juries of six shall proceed in accordance with the provisions of law applicable to trials by jury in the Superior Court; provided, however, that the number of peremptory challenges shall be limited to two to each party.” (St. 1996, c. 358, § 8, ¶ 9).

**35. Can stenographers be appointed in a civil jury session?**

Yes. The law provides that a judge presiding at a District Court civil jury session may appoint a stenographer upon request of a party, provided that the court electronic recording system is not available or not properly functioning. (Presumably this includes pretrial proceedings and jury-waived trials as well as jury trials conducted at such sessions.) St. 1996, c. 358, § 8, ¶ 12. The law sets out the duties of a stenographer, and states that the stenographer must be paid for his or her services and expenses by the Commonwealth and that copies of the resulting transcript must be provided to the parties and paid for by the party who requested the stenographer. The request for a stenographer to preserve testimony at a trial must be in writing and given to the court clerk no later than 48 hours before the proceeding.

The law also provides that an audio record of court proceedings recorded by a device under the exclusive control of the court is the official record of the proceedings.

**36. How can issues of law arising in civil actions be appealed?**

Appeal on issues of law arising in civil actions must be heard by the District Court Appellate Division created by G.L. c. 231, § 108. Such appeals are governed by the District/Municipal Courts Rules for Appellate Division Appeal. Further appeal is to the Appeals Court. The new law also permits a District Court judge sitting in a civil jury session to report questions of law directly to the Appeals Court (St. 1996, c. 358, § 8, ¶ 8).

For appeals to the Appellate Division, the civil one trial law requires the filing of a bond payable to the appellee “in such reasonable sum and with such surety or sureties as may be approved by the appellee or by the justice or clerk or assistant clerk” of the trial court. The purpose of the bond is to satisfy any judgment for costs that may be entered against the appellant by the Appellate Division. The appellant may deposit cash in lieu of a bond, in a reasonable amount fixed by the clerk or judge of the trial court “as security for the prosecution of the appeal and the payment of costs.” The law also lists

those parties exempt from the bond requirement, and makes inapplicable to such bonds the \$30 bond approval fee normally required by G.L. c. 262, § 2. (St. 1996, c. 358, § 8 ¶¶ 14 & § 12.)

### **Summary Process Actions**

#### **37. What changes does the new law make regarding summary process actions?**

Under the civil one trial law, summary process actions may still be commenced either in District Court, Housing Court, or Superior Court. In District Court summary process actions, however, it eliminates de novo appeal to Superior Court from the District Court judgment. Thus, a summary process case that is filed in a District Court under the civil one trial system will be tried to conclusion in that District Court, with a single trial either before a judge or (if there has been a proper jury claim) by a six-person jury. (St. 1996, c. 358, §§ 8 & 10.) Note that procedure in these cases is still governed by the Uniform Summary Process Rules.

It is important to note that, under the civil one trial law, **District Court summary process actions (unlike civil money damage actions) have no jurisdictional limit on the damages claimed or likely to be recovered.** Thus, under the civil one trial system, the District Court has jurisdiction over summary process actions even if more than \$25,000 in damages is sought. (This change was made by the amendment of St. 1996, c. 358, § 10 by St. 2000, c. 142, § 16, in order to supersede the contrary holding of *Ropt Ltd. Partnership v. Katin*, 431 Mass. 601, 729 N.E.2d 282 [2000]).

In such District Court summary process actions, appeal on issues of law is available to the Appellate Division, in accordance with the District/Municipal Courts Rules for Appellate Division Appeal, with further appeal to the Appeals Court. The new statute has changed the traditional rule that the Appellate Division has no jurisdiction over summary process matters. *Gloucester Bank & Trust Co. v. Ferrara*, 1998 Mass. App. Div. 18.

In addition to the Appellate Division appeal bond required by the civil one trial law (St. 1996, c. 358, § 8, ¶ 14), the Appellate Division has determined that summary process appeals under the civil one trial system are subject to the additional appeal bond requirements of G.L. c. 239, § 5. *Bertone v. Alperin*, 2000 Mass. App. Div. 161.

#### **38. Where are jury trials provided in summary process cases?**

Jury trials are provided at selected District Courts in each of the civil one trial counties (St. 1996, c. 358, § 8, ¶ 4).

#### **39. How must a party claim a jury trial in a summary process case?**

The civil one trial law states that any party seeking a jury trial in a summary process case must do so by making a jury demand pursuant to Uniform Summary Process Rule 8, and that failure to do so “shall constitute a waiver by that party of trial by jury” (St. 1996, c. 358, § 8, ¶ 2). The jury demand may either be endorsed upon a pleading, or separately filed and served.

## **Case Management under Standing Order 1-98**

### **40. What is the purpose of Standing Order 1-98?**

While the civil one trial statute provides the basic elements of the new system, just as important are the detailed procedures in Standing Order 1-98 for managing the prompt and orderly disposition of civil cases as they move through the one trial system. It will require the clerk's office to institute some new systems to ensure its proper implementation.

Standing Order 1-98 replaces the prior "Time Standards" (Standing Order 1-88) for cases that are subject to the civil one-trial system.

### **41. Is Standing Order 1-98 applicable to cases filed before the civil one trial system?**

The provisions of Standing Order 1-98 regarding motion practice (Section VI), non-filing of discovery materials (Section VII), and continuances (Section VIII) apply to all pending civil actions for money damages, including those filed prior to the effective date of the civil one trial system.

All other provisions of Standing Order 1-98 apply only to civil actions for money damages that are subject to the civil one trial system.

### **42. Are there any "automatic" dismissal procedures in Standing Order 1-98?**

Yes. There are two "automatic" dismissal procedures in Standing Order 1-98:

- ***Dismissal for lack of service.*** Standing Order 1-98, § V.A. requires the clerk's office to utilize Mass. R. Civ. P. 4(j) to automatically dismiss any case in which the plaintiff has failed to serve the summons and complaint on the defendant with 90 days after filing the complaint. This requires each clerk-magistrate to implement a system so that: (1) complaints where no proof of service has been filed for 90 days after case filing are promptly identified on an ongoing basis; (2) a Rule 4(j) judgment of dismissal is promptly docketed in such cases; and (3) a Notice of Entry of Judgment of Dismissal is promptly sent to the parties.

To implement this procedure, clerk's office personnel must check each case file 120 days after filing in every case in which an answer has not been filed to see if there is a return of service in the file at that time. (The 120 days allows for the 90-day period for service, plus the 20-day period for filing the return of service, plus a three-day period to allow for filing of the return by mail, plus a seven-day "cushion.")

- ***Dismissal nisi for failure to act on default.*** Standing Order 1-98, § V.B. is the other "automatic" dismissal provision. Its purpose is to dismiss any case in which a default judgment would be appropriate, but the plaintiff has taken no action for eight months to obtain it. It requires the automatic entry of a conditional Order for dismissal in any case where no answer or defensive motion has been filed for eight months after the case was filed. The case is subsequently to be dismissed unless the plaintiff acts to obtain a default judgment, or to request non-dismissal, within 30 days after the conditional Order.

This procedure requires the clerk-magistrate to establish a system to: (1) identify these non-answer cases at the end of eight months, (2) promptly docket and send a conditional Order for

dismissal, and (2) promptly docket and send a Judgment of Dismissal and a Notice of Entry of Judgment of Dismissal thirty days later, when appropriate. *A sample “Order Nisi for Dismissal for Failure to Act on Default” form is reproduced at p. 37, and a sample “Notice of Entry of Judgment of Dismissal for Failure to Act on Default” form is reproduced at p. 38.*

Note that cases under the civil one trial system are not governed by Standing Order 1-88, so there is no need to track these cases for a possible automatic “Time Standards dismissal” at the end of one year from filing. Cases subject to the civil one trial system are instead governed by Standing Order 1-98.

**43. Why is a case management conference required?**

In every civil action for money damages that is subject to the civil one trial system, once an answer is filed by any defendant, the clerk’s office must schedule and send notice of a case management conference to be held *within four months* after the answer was filed (Standing Order 1-98, § III.A). This requires each clerk-magistrate to create a system to ensure that the proper notice is sent out promptly as soon as an answer is filed. *A sample “Notice of Case Management Conference” form is reproduced at p. 39.*

The case management conference may be conducted by a judge, or by a clerk-magistrate or assistant clerk-magistrate who has been designated by the Chief Justice (§ III.C). Its purpose is *early intervention*, and its specific goals are set out in § III.B:

- ***Trial-readiness:*** to assess the trial-readiness of cases
- ***Settlement:*** to discuss settlement progress and opportunities for settlement, and offer and conduct early intervention alternative dispute resolution
- ***Case management orders:*** to consider case management orders proposed by any party, or by the court, regarding limitation or sequencing of discovery events, disclosure or limitation of expert witnesses, motion briefing, and other matters that would reduce expense and delay of litigation, and to enter appropriate orders
- ***Default or dismissal:*** to enter judgment for relief or dismissal, and schedule hearing for assessment of damages if necessary, and
- ***Firm date for trial or pretrial conference:*** to assign a firm date for trial in cases that are ready for trial, and a firm date for pretrial conference for all cases which are not yet ready for trial.

**44. Is a pretrial conference required?**

If a case is not disposed or assigned a trial date at the case management conference, then during the case management conference a firm date must be set for a pretrial conference. (Standing Order 1-98, § III.B). A Notice of Pretrial Conference should be completed immediately and given to the parties before they leave the case management conference. *A sample “Notice of Pretrial Conference” form is reproduced at p.40.*

The pretrial conference must be scheduled for a date *not later than the end of the tenth month after the month in which the case was filed*, or any other date the court may order for good cause. (For example, a case filed anytime during the month of January must be scheduled for a pretrial conference no later than the end of November.) (§ IV.A.)

In advance of the pretrial conference:

- The parties must prepare and file a joint Pretrial Memorandum for use at the conference (§ IV.A).
- Discovery and pretrial motions must be filed, marked and heard before the pretrial conference, unless the court orders otherwise (§ II), and
- Counsel must complete preparation of his or her case by the date of the pretrial conference, unless the court orders otherwise (§ II).

The pretrial conference must be conducted by a judge or, if a judge is unavailable, by a clerk-magistrate or assistant clerk-magistrate who has been designated by the Chief Justice. If both parties are represented by counsel, a mediator or conciliator assigned by the court may conduct the conference, if the parties consent (§ IV.C).

The purpose of the pretrial conference is settlement of the case or, for cases which do not settle, assignment of a firm trial date after consultation with counsel. If a trial date is required, notice of such date must be given to all parties at the pretrial conference. At the conclusion of the pretrial conference, the person conducting the pretrial conference must prepare a Pretrial Conference Report (§ IV.B). A sample “Pretrial Conference Report” form is reproduced at p. 41.

**45. Is a Trial Order required after a pretrial conference?**

Yes. When it is determined at the pretrial conference that a trial is required, the court must issue a Trial Order requiring the parties to prepare for trial. (Standing Order 1-98, § IV.B.) If the pretrial conference was conducted by a judge (or a judge is immediately available), it is good practice to immediately complete and distribute a Trial Order to the parties before the conclusion of the pretrial conference. Otherwise, a Trial Order should be authorized by a judge and sent to the parties promptly after the pretrial conference. A sample “Trial Order” form is reproduced at pp. 42-43.

**46. Is there a way for motions to be decided without the attorneys having to be present?**

Yes. Standing Order 1-98, § VI.C creates an “opposition procedure” modeled on that used in the Superior Court. Where all parties are represented by counsel, it permits most motions to be disposed without hearing if the moving party properly invokes the opposition procedure, and no other party files an “opposition to motion” at least five days before the marked-up hearing date. The court must then decide the motion and notify the parties within 14 days after the marked-up hearing date.

Certain motions are exempted from the opposition procedure, including motions for continuance.

**47. Are there any special provisions in Standing Order 1-98 for discovery materials?**

Yes, there are two:

- **Non-filing of discovery materials.** After the recent amendment of Mass. R. Civ. P. 5(d)(2) (effective May 1, 2002; see Trans. 791), both Rule 5 and Standing Order 1-98, § VII direct the parties *not* to file with the court any interrogatories or answers to interrogatories, deposition notices, or document requests or responses. The May 1, 2002 amendments have also eliminated

from Mass. R. Civ. P. 33(a) the requirement that any agreement to extend a discovery due date be filed with the court. Standing Order 1-98, § VII goes further and directs the parties *not* to file with the court “any discovery stipulation or agreement that does not affect the pretrial schedule” that is found in § II of the standing order (see Question 44).

- ***Motions involving discovery materials.*** Standing Order 1-98, § VI.B requires that discovery motions must include copies of the discovery requests and responses which are the subject of the motion. It also requires that summary judgment motions that rely on any pleading or discovery must include copies of such pleadings or discovery. Noncomplying motions may be denied without prejudice.

48. **What are the requirements for continuances?**

Standing Order 1-98, § VIII provides several specific provisions regarding continuances, including the following:

- Counsel and pro se litigants are excused from attending a scheduled event only if they have been notified by the court that it has been continued.
- All continuances must be requested by written motion, accompanied by an affidavit of counsel, and include a list of any days within the following 30 days that counsel is unavailable for the event to be continued. Counsel must send a copy of any continuance request to the client.
- Clerk-Magistrates and designated assistant clerks may allow a joint request to continue a case management conference or pretrial conference, but only once and for not more than 30 days. All other continuances may be granted only by a judge. A trial date may be continued only by a judge assigned to the civil trial session (or in case of absence or unavailability, the presiding judge or a judge designated by him or her).
- All continuances must be to a date and event certain.

St. 1996, c. 358  
as amended by St. 1998, c. 157, St. 2000, c. 142,  
and St. 2002, c. 70 (effective April 1, 2002)

## **AN ACT ESTABLISHING A ONE TRIAL SYSTEM FOR CIVIL CASES IN [ELEVEN] COUNTIES**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

*Suspension of  
remand/removal system  
in experimental counties:*

- *Superior Court*

**SECTION 1.** Notwithstanding the provisions of section five of chapter two hundred and twelve of the General Laws, the superior court in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties shall have jurisdiction in civil actions otherwise subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws, as provided in section four of this act.

- *District Court*

**SECTION 2.** Notwithstanding the provisions of sections twelve and thirteen of chapter two hundred and twelve of the General Laws, the superior court in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties shall not hear appeals in district court civil actions otherwise subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws.

*District Court  
equity jurisdiction  
in civil actions*

**SECTION 3.** Notwithstanding the provisions of section nineteen C of chapter two hundred and eighteen of the General Laws, for civil actions otherwise subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws, district courts in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties shall have the same equitable powers and jurisdiction as is provided for the superior court pursuant to chapter two hundred and fourteen of the General Laws for the purpose of the hearing and disposition of such cases.

*District Court  
civil jurisdiction  
if no reasonable likelihood  
of recovery over \$25,000*

**SECTION 4.** Notwithstanding the provisions of any general or special law to the contrary, including section four of chapter two hundred and twelve of the General Laws and section nineteen of chapter two hundred and eighteen of the General Laws, district courts in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties shall have exclusive original jurisdiction of civil actions, otherwise subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws, in which there is no reasonable likelihood that recovery by the plaintiff will exceed twenty-five thousand dollars or such other amount as is ordered from time to time by the supreme judicial court.

*Superior Court  
civil jurisdiction  
if no reasonable likelihood  
of recovery less than  
or equal to \$25,000*

In Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties, civil actions, otherwise subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws, in which there is no reasonable likelihood that recovery by the plaintiff will be less than or equal to twenty-five thousand dollars or such other amount as is ordered from time to time by the supreme judicial court shall be heard exclusively in the superior court.

*Court clerk not to accept  
civil complaints without  
Statement of Damages*

**SECTION 5.** In Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties, no clerk-magistrate in the superior court or in a district court shall accept for filing any complaint or other pleading which commences [a] civil action unless it is accompanied by a statement signed by the attorney or pro se party. The statement must specify in full and in itemized detail the facts on which the plaintiff then relies to determine money damages. The defendant may file with his answer a statement specifying in detail the potential damages which may result if the plaintiff prevails.

*Dismissal by judge  
for want of  
jurisdictional amount*

If it appears to the court, in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties, from the statement of damages by the plaintiff that there is no reasonable likelihood that the estimated damages will be consistent with the jurisdictional limits of the court, as set forth in section four of this act, the judge, after receiving written responses from the parties and after a hearing, if requested by one of the parties, may dismiss the case without prejudice for want of jurisdiction. The judge shall make written findings of fact in support of such dismissal of the action. The filing fee in such dismissed actions shall be retained by the court; provided, however, that the recommencement of the same action in another department of the trial court shall not require the payment of a filing fee in the new court if that court is a district court. If the action is recommenced in the superior court, the filing fee shall be reduced by the amount of the filing fee previously paid to attempt to commence the same action in the district court.

- *Written findings*
- *Effect on filing fee*

- *Appeal within 7 days to  
single justice of Appeals  
Court*

**SECTION 6.** In any case in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties where the superior court or a district court dismisses the case for want of jurisdiction as provided in section five, the plaintiff may take an appeal as hereinafter provided. The appeal shall be to a single justice of the appeals court at the next sitting thereof. Upon being notified of the dismissal, the plaintiff shall have seven days thereafter to file a notice of appeal with the clerk of the dismissing court. Upon receipt of notice of appeal timely filed, the clerk shall forthwith notify the judge who approved the dismissal for want of jurisdiction within three days of receipt of such notice, [and] the judge who approved the dismissal shall set forth written findings and reasons justifying such dismissal, which document shall be part of the record on appeal.

- *Upon appeal, clerk to  
notify judge to make  
findings*

- *Transmitting appeal to Appeals Court*

The clerk shall forward the pleading which commenced the civil action, all statements by the parties, specifying in detail the potential damages if the plaintiff prevails, the judge's written findings and reasons justifying the dismissal and any other documents on file relevant to the appeal to the clerk of the appeals court. Upon receipt thereof, the clerk of the appeals court shall set the matter down for a speedy hearing and send notice to the parties.

The court dismissing the case for want of jurisdiction may, with or without motion, issue an order or process to preserve the rights of the parties pending the appeal. The single justice of the appeals court may enter or revoke any such order or process. The decision of the single justice of the appeals court as to dismissal for want of jurisdiction shall be final.

- *Statute of limitations extended 30 days for dismissed case*

**SECTION 7.** Notwithstanding the provisions of chapter two hundred and sixty of the General Laws or any other applicable statutes of limitation, in a civil action in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties otherwise subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws, in which a plaintiff's case has been dismissed for want of jurisdiction as provided in section five of this act, the plaintiff shall be given thirty days after the date of the notice of dismissal or, in the case of an appeal from the dismissal, thirty days after the date of notice of the decision of the single justice of the appeals court to file the case in the appropriate court; provided, however, that the commencement of the dismissed case was within the applicable statute of limitations. The thirty-day time limit in this section for recommencement of an action following dismissal of the action shall apply only when the time permitted under the applicable statute of limitations would have expired at any time from the original commencement of the action to the end of such thirty-day period.

- *One trial in District Court*

**SECTION 8. [¶1]** Notwithstanding the provisions of any general or special law to the contrary, including sections ninety-seven, ninety-eight, ninety-nine, one hundred and one, one hundred and two, one hundred and two C, one hundred and three, one hundred and four, one hundred and four A, one hundred and six and one hundred and seven of chapter two hundred and thirty-one of the General Laws, all civil actions filed in the district courts of Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties, which actions were formerly subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws, shall be subject to one trial, with or without a jury of six, in the district court department.

- *Demand for jury trial; waiver of jury trial*

**[¶2]** Any party may demand a trial by jury of six of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing after the commencement of the action. Such a demand may be endorsed upon a pleading of the demanding party. The failure of a party to serve and file a demand for jury trial, as required by Rule thirty-eight of the Massachusetts Rules of Civil

Procedure or, in a summary process case, by Rule eight of the Uniform Summary Process Rules, shall constitute a waiver by that party of trial by jury.

*Pretrial conference and  
hearing required*

[¶3] In any case in which a party has filed a timely demand for a jury trial, the action shall not be designated upon the docket as a jury action until after the completion of a pretrial conference, a hearing on the results of such conference and until the disposition of any pretrial discovery motion and compliance with any order of the court pursuant to such motions.

*Jury sessions*

[¶4] In Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties, district courts are authorized to hold jury of six sessions for the purpose of conducting jury trials of civil cases commenced in said courts over which said court have original jurisdiction pursuant to the provisions of section four. The chief justice for the district court department shall designate at least one district court in each of said counties for the purpose of conducting jury trials; provided, however, that with the approval of the chief justice for the superior court department, facilities of said superior court may be designated by the chief justice for administration and management of the trial court for the conduct of jury trials in cases commenced in such district courts. If necessary, facilities of any department of the trial court may be designated by the chief justice for administration and management for trial by jury of civil cases from the district courts of Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties.

*Jury-waived sessions*

[¶5] The chief justice for the district court department may also designate one or more district courts in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties for the purpose of conducting jury waived trials of cases commenced in any district court of said counties consistent with the requirements of the proper administration of justice.

[¶6] Persons in such district courts who waive their right to jury trial shall be provided a jury waived trial in the same district court if such jury waived trial session has been established in such court. If such jury waived trials have not been so established, the parties shall be provided a jury waived trial in a court as hereinbefore designated.

*Transfer to jury session  
in different court*

[¶7] Parties in such district courts who claim a jury trial shall be provided a jury trial in a jury of six session in the same court if a jury of six has been established in such court. If such session has not been so established, the parties shall be provided jury trials in a jury of six session as hereinbefore designated. In cases where the parties claim a jury trial, the clerk shall forthwith transfer the case for trial in the appropriate jury session. Such transfer shall be governed by procedures to be established by the chief justice for the district court department.

*Powers of  
jury session judges*

[¶8] The justice presiding over a jury of six session shall have and exercise all powers and duties which a justice sitting in the superior court department has and may exercise in the trial and disposition of civil cases including the power to report questions of law to the appeals court.

[¶9] Trials by juries of six shall proceed in accordance with the provisions of law applicable to trials by jury in the superior court; provided, however, that the number of peremptory challenges shall be limited to two to each party.

*Jurors*

[¶10] Jurors shall be provided for the jury of six session by the office of the jury commissioner in accordance with provisions of chapter two hundred and thirty- four A of the General Laws. If necessary, the superior court shall make available jurors from the pool of jurors for the jury sessions in either civil or criminal sessions in the superior court.

*Jury session sittings*

[¶11] The chief justice for the district court department shall arrange for the sittings of the jury sessions and shall assign justices thereto, so that speedy trials may be provided. Review may be had by the appropriate appellate division pursuant to section one hundred and nine of chapter two hundred and thirty-one of the General Laws, and thereafter by the appeals court.

*Appeal to  
Appellate Division*

*Appointment of  
stenographer  
in jury session*

[¶12] The justice presiding at such jury of six session may, upon the request of a party, appoint a stenographer; provided, however, that where the party claims indigency, such appointment is determined to be reasonably necessary in accordance with the provisions of chapter two hundred and sixty-one of the General Laws; and, provided further, that the court electronic recording system is not available or not properly functioning. Such stenographer shall be sworn, shall take stenographic notes of all the testimony given at the trial and shall provide the parties thereto with a transcript of the notes or any part thereof taken at the trial or hearing for which the stenographer shall be paid by the party requesting it at the rate fixed by the chief justice for the district court department; provided, however, that such rate shall not exceed the rate provided by section eighty-eight of chapter two hundred and twenty-one of the General Laws. Said chief justice may make regulations consistent with law relative to the assignments, duties and services of stenographers appointed for sessions in his department and any other matter relative to stenographers. The compensation and expenses of such appointed stenographers shall be paid by the commonwealth.

[¶13] The request for the appointment of a stenographer to preserve the testimony at a trial shall be given to the clerk of the court by a party, in writing, no later than forty-eight hours prior to the proceeding for which the stenographer has been requested. The party may file with such request an affidavit of indigency and request for payment by the commonwealth of the cost of the transcript and the court shall hold a hearing on such request prior to appointing a stenographer in those cases where the party will be unable to pay such cost. Such hearing shall be governed by the provisions of chapter two hundred and sixty-one of the General Laws and the cost of such transcript shall be considered an extra cost as provided therein. If the court is unable, for any reason, to provide a stenographer, the proceedings may be recorded by electronic means. The

*Electronic recordation*

original recording of proceedings in a district court made with a recording device under the exclusive control of the court shall be the official record of such proceedings. Said record or a copy of all or a part thereof, certified by the chief justice for the district court department, or his designee, to be an accurate electronic reproduction of said record or part thereof, or a typewritten transcript of all or a part of said record or copy thereof, certified to be accurate by the court or by the preparer of said transcript, or stipulated to by the parties, shall be admissible in any court as evidence of testimony given whenever proof of such testimony is otherwise competent. A party may request payment by the commonwealth of the cost of said transcript subject to the same provisions regarding a transcript of a stenographer as hereinbefore provided.

*Bond for appeal to  
Appellate Division*

[¶14] Any party who files in the district courts of Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties an appeal to the appellate division, in an action otherwise subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws, within ten days of the entry of judgment or within such further time as the justice orders for cause shown allows, shall also file a bond executed by the party or attorney of record on such party's behalf, payable to the appellee in such reasonable sum and with such surety or sureties as may be approved by the appellee or by the justice or clerk or assistant clerk of such district court, conditioned to satisfy any judgment for costs which may be entered against the appellant upon said appeal.

• *Cash deposit  
in lieu of bond*

[¶15] Any party, in lieu of filing the bond required for an appeal to the appellate division, may deposit with the clerk, within the time required for filing a bond, a reasonable amount to be fixed by the clerk or justice, as security for the prosecution of the appeal and the payment of costs. A certificate of such deposit shall be issued to the depositor by the clerk of the district court who shall hold such deposit until the final disposition of the case when the clerk shall apply such deposit to the satisfaction of any costs awarded against such depositor and pay the balance, if any, to such depositor or such depositor's legal representative.

• *Exemptions from  
bond requirement*

[¶16] No bond or deposit shall be required of the commonwealth or any officer or employee thereof represented by the attorney general, or of a county, city, town or other municipal corporation, or of a board, officer or employee thereof represented by the city solicitor, town counsel or other officer having similar duties, or of a political subdivision, or of a party who has given bond according to law to dissolve an attachment or of a defendant in an action of tort arising out of the ownership, operation, maintenance, control or use of a motor vehicle or trailer as defined in section one of chapter ninety of the General Laws if the payment of any judgment for costs which may be entered against him is secured, in whole or in part, by a motor vehicle liability bond or policy or a deposit as provided in section thirty-four D of chapter ninety of the General Laws and the court may, in any case, for cause shown, after notice to adverse parties, order that no bond be given.

*G.L. c. 231, §§ 97-107  
inapplicable in  
experimental counties*

**SECTION 9.** The provisions of sections ninety-seven, ninety-eight, ninety-nine, one hundred and one, one hundred and two, one hundred and two C, one hundred and three, one hundred and four, one hundred and four A, one hundred and six and one hundred and seven of chapter two hundred and thirty-one of the General Laws shall not apply in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties.

*One trial in  
summary process*

**SECTION 10.** Notwithstanding sections 3 and 5 of chapter 239 of the General Laws, summary process actions in the district courts of Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties shall be subject to one trial in the district court department as provided in section 8. Notwithstanding the jurisdictional limitation of \$25,000 or such other amount as is ordered from time to time by the supreme judicial court under section 4, in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties the district courts shall have nonexclusive original jurisdiction over all summary process actions.

- *District Court  
summary process  
not subject to \$25,000  
jurisdictional limit*

*Appeal to Appellate  
Division from denial of  
waiver of fees under  
G.L. c.261, §§27A-29*

**SECTION 11.** Notwithstanding the provisions of section twenty-seven D of chapter two hundred and sixty-one of the General Laws, in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties, in civil actions otherwise subject to transfer, retransfer, removal and appeal, pursuant to sections ninety-seven to one hundred and seven, inclusive, of chapter two hundred and thirty-one of the General Laws, appeals in the district court of denials of a request for waiver, substitution or payment by the commonwealth of fees and costs shall be to the appellate division.

*\$30 fee for approving  
surety on appeal bond  
inapplicable*

**SECTION 12.** The fourth paragraph of section two of chapter two hundred and sixty-two of the General Laws shall not apply in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties.

*Governs cases filed after:*

- *7/1/96 in Norfolk and  
Middlesex counties*
- *9/1/00 in Berkshire and  
Essex counties*
- *4/1/02 in Barnstable,  
Bristol, Dukes,  
Franklin, Hampden,  
Hampshire and  
Nantucket counties*

**SECTION 13.** The provisions of this act shall be implemented by the chief justice for administration and management of the trial court and shall be effective in Norfolk and Middlesex counties for a period of 98 months commencing on July 1, 1996. Such provisions shall be effective in Berkshire and Essex counties for a period of 48 months commencing on September 1, 2000. Such provisions shall be effective in Barnstable, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire and Nantucket counties for a period of 29 months commencing on April 1, 2002. This act shall apply only to civil actions commenced on or after the aforesaid effective dates for the respective counties. Commencement of such actions shall be defined by Rule 3 of the Massachusetts Rules of Civil Procedure and Rule 2 of the Uniform Summary Process Rules.

*Sunset clause*

**SECTION 14.** After August 31, 2004, civil cases pending or initiated in district courts in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties in which the

parties have not elected, as of the date of such expiration, either a trial by a jury of six or a trial by a court without a jury, shall be conducted pursuant to all applicable provisions of the General Laws and shall not be subject to the provision of this act; provided, however, that civil cases pending in said counties as of the date of such expiration in which the parties have elected either a trial by a jury of six or a trial by a court without a jury, shall continue to be conducted in accordance with the provisions of this act.

*Reports due SJC  
and Legislature*

**SECTION 15.** The chief justice for administration and management of the trial court, in consultation with the chief justice for the superior court and the district court departments, shall prepare and file with the supreme judicial court and with the clerks of the senate and house of representatives and the house and senate committees on ways and means, an interim report on the implementation of this act, on or before August 31, 2003 and a final report on said implementation on or before October 31, 2004. Said reports shall provide detailed information concerning the status and effect of implementation of this act, including, but not limited to, any costs incurred as a result of such implementation as well as a statistical analysis of the disposition of civil cases conducted pursuant to the provisions of this act which indicate, for each district court and superior court in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket and Norfolk counties, the total number of cases entered, the number of cases disposed before trial, the number of cases tried by a jury of six, the number of cases tried by a court without a jury and the average time between entry and disposition of cases in each such category.

DISTRICT COURT DEPARTMENT OF THE TRIAL COURT

Standing Order No. 1-98,  
as amended April 1, 2002

**CIVIL CASE MANAGEMENT  
IN COURTS GOVERNED  
BY THE ONE TRIAL SYSTEM**

**I. PURPOSE AND APPLICABILITY**

The purpose of this Order is to implement "An Act Relative to the One-Trial System for Civil Cases in [Eleven] Counties" (St. 1996, c. 358, as amended by St. 1998, c. 157, St. 2000, c. 142 and St. 2002, c. 70) in courts governed by that law by establishing case management procedures that reduce the expense and delay of civil litigation.

This Order applies to all tort and contract actions in which money damages are sought ("civil actions") and which have been commenced (1) in Norfolk and Middlesex counties on or after January 1, 1998; (2) in Berkshire and Essex Counties on or after September 1, 2000; or (3) in Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket Counties on or after April 1, 2002. Sections VI, VII and VIII of this Order also apply to all tort and contract actions pending in such counties, regardless of the date of commencement of such actions.

This Order supersedes Standing Order 1-88 with respect to all civil actions and all procedures to which this Order applies.

**II. GENERAL PRETRIAL SCHEDULE**

It shall be the responsibility of counsel to complete the preparation of his or her case by the date of the pretrial conference as scheduled in accordance with Section IV A, unless the court orders otherwise. Discovery and pretrial motions, including motions pursuant to Mass. R. Civ. P. 12, 15, 19, 20 and 56, and such other motions as may be prescribed by the court, shall be filed, marked and caused to be heard by such date unless the court permits otherwise for good cause shown.

**III. CASE MANAGEMENT CONFERENCE**

A. **Scheduling.** Upon the filing of an answer by any defendant, the court shall immediately give notice to all parties in the action of a case management conference pursuant to Mass. R. Civ. P. 16 to be held on a date certain within four months of the date of filing of such answer, or sooner if directed by the court or jointly requested by all parties. Counsel or pro se litigants shall appear in person at the case management conference. The court may impose

sanctions, including dismissal, default and assessment of costs, for failure to attend the conference without good cause.

**B. Purpose.** The purpose of the case management conference shall be to: (1) assess the trial-readiness of cases; (2) assign a firm trial date for cases that are ready for trial; (3) discuss settlement progress and opportunities for settlement, and offer and conduct early intervention alternative dispute resolution; (4) consider case management orders proposed by any party, or by the court, regarding limitation or sequencing of discovery events, disclosure or limitation of expert witnesses, motion briefing, and other matters that would reduce expense and delay of litigation, and enter appropriate orders; (5) enter judgment for relief or dismissal, and schedule hearing for assessment of damages if necessary; and (6) assign a firm date for pretrial conference for all cases which are not yet ready for trial.

Notice of the date of trial or pretrial conference shall be given to the parties at the case management conference after consultation with counsel. In all cases scheduled for trial, the person conducting the case management Conference shall prepare a pretrial conference report.

**C. Judicial officer.** The case management conference shall be conducted by a Justice or, if a Justice is unavailable, by a Clerk-Magistrate or Assistant Clerk-Magistrate who has been designated by the Chief Justice of the District Court in accordance with G.L. § 221, § 62C and Trial Court Rule II(3)(a) to conduct such conferences. Only a Justice may issue or approve any orders arising from the case management conference.

#### **IV. PRETRIAL CONFERENCE**

**A. Scheduling and pretrial memorandum.** All cases not disposed or assigned a trial date at the case management conference shall be assigned a firm date for pretrial conference when they are expected to be ready for trial, such date to be not later than the end of the tenth month after the month in which the action was filed, or such later date as the court may order for good cause shown. Upon scheduling an action for pretrial conference, the court shall issue a Notice of Pretrial Conference requiring the parties to prepare a joint pretrial memorandum for use at the pretrial conference. Failure of any party to attend the pretrial conference or prepare a joint pretrial memorandum may result in sanctions, including dismissal, default and assessment of costs.

**B. Agenda, report and Trial Order.** The purpose of the pretrial conference is settlement of the case or, for cases which do not settle, assignment of a firm trial date. The person conducting the pretrial conference shall thereafter prepare a pretrial conference report. For actions requiring a trial date, notice of such date shall be given to all parties at the pretrial conference after consultation with counsel. Upon scheduling a case for trial, the court shall issue a Trial Order requiring the parties to prepare for trial. Failure of any party to prepare for trial as required by such order may result in preclusion of evidence or other sanctions in the discretion of the trial judge.

**C. Judicial officer.** The pretrial conference shall be conducted by a Justice or, if a Justice is unavailable, by a Clerk-Magistrate or Assistant Clerk-Magistrate who has been designated by the Chief Justice of the District

Court in accordance with G.L. c. 221, § 62C and Trial Court Rule II(3)(a) to conduct such conferences, or, in cases where all parties are represented by counsel, by a conciliator or mediator assigned by the court with the consent of the parties. Only a Justice may issue or approve any orders arising from the pretrial conference.

#### **V. DISMISSAL FOR LACK OF SERVICE OR FAILURE TO ACT ON DEFAULT**

All actions in which there is no timely service of the complaint or no timely action upon default shall be dismissed as follows:

A. **Dismissal for lack of service.** After commencement of each action, the Clerk-Magistrate shall review the docket to determine whether the plaintiff has complied with the time limits for service pursuant to Mass. R. Civ. P. 4(j), together with any extensions allowed by the court pursuant to Mass. R. Civ. P. 6. Upon determining noncompliance, the Clerk-Magistrate shall issue notice of dismissal of the action as provided by Rule 4(j).

B. **Dismissal nisi for failure to act on default.** Where an action has remained on the docket for eight months without an answer or defensive motion having been filed by any defendant, the Clerk-Magistrate shall enter an Order Nisi for Dismissal advising the plaintiff that a Judgment of Dismissal will be entered 30 days from the date of the Order unless the plaintiff either (1) requests entry of default and moves for default judgment in accordance with Mass. R. Civ. P. 55, or (2) reports in writing that the case is active and requests that it not be dismissed.

#### **VI. MOTION PRACTICE**

A. **General.** Pursuant to Mass. R. Civ. P. 6 and 78, all motions shall be accompanied by an affidavit of notice setting forth the date and time of hearing on the motion. All motions shall be scheduled by counsel for the moving party on the court's usual civil motion hearing day as published by the court, or on the date the case is scheduled for case management conference or pretrial conference, or as otherwise ordered by the court.

B. **Discovery and summary judgment motions.** All discovery motions filed pursuant to Mass. R. Civ. P. 26 or 37 shall include copies of the discovery requests and responses which are the subject of the motion. Motions for summary judgment which rely on any pleading or discovery shall include copies of such pleadings or discovery with the motion. Any discovery or summary judgment motions which do not include such copies may be denied without prejudice.

C. **Opposition procedure.** In actions where all parties are represented by counsel, motions may be allowed by the court without the attendance of counsel in the following manner.

1. **Designation by moving party.** The moving party shall state on the caption of the motion and on the affidavit of notice, "SUBJECT TO OPPOSITION PROCEDURE," and file and serve such motion at least 14 days before the motion hearing date. If no other party timely files and serves an "OPPOSITION TO

MOTION" as described below, the motion will be considered by the court without a hearing or the attendance of any counsel.

2. **Opposition by other party.** If any other party opposes the motion or otherwise seeks to be heard, such party shall file and serve a document captioned "OPPOSITION TO MOTION" at least five days before the motion hearing date. If any party timely files and serves such an "OPPOSITION TO MOTION," all counsel shall be required to attend the scheduled hearing, unless in such "OPPOSITION TO MOTION" the party expressly waives the right to such hearing, in which case the motion will be considered by the court without a hearing or the attendance of any counsel.

3. **Exempted motions.** This opposition procedure shall not apply to the following motions: motions to continue case management conference, pretrial conference or trial; ex parte motions; petitions for approval of settlement by a minor; motions seeking sanctions of any kind; motions for preliminary and permanent injunction; motions for a receiver; motions for relief from judgment; motions for a new trial; motions for reconsideration; and any motion ordered by a Justice to be decided after hearing.

4. **Notice of decision.** When a motion is considered under the opposition procedure, the court shall act upon, and send written notice of such action to all parties, within 14 days after the hearing date.

#### VII. NON-FILING OF DISCOVERY MATERIALS

Pursuant to Mass. R. Civ. P. 5(d)(2), parties shall serve, but not file, the following discovery materials: interrogatories and answers to interrogatories; notices and transcriptions of depositions; document requests and responses. Parties shall not file any discovery stipulation or agreement that does not affect the pretrial schedule set forth in Section II above.

#### VIII. CONTINUANCES

A. **General.** Continuances of case management conferences, pretrial conferences and trials shall be disfavored because of the advance notice to, and the participation of counsel in, the scheduling of these events. Continuance of these events will be allowed for good cause only, and any continuance shall be to a date and event certain. No action shall be "continued generally" or taken off the schedule for any reason.

B. **Form of motions.** Requests for continuances shall be made only by written motion, with an affidavit of counsel, and counsel shall send a copy of the continuance request to his or her client(s) by first-class mail. All motions for continuance shall include a list of any days within the next 30 days that counsel for any party is unavailable for the continued event.

C. **Joint requests to continue case management conference or pretrial conference.** The Clerk-Magistrate or an Assistant Clerk designated by the Clerk-Magistrate may allow a joint request to continue a case management conference or pretrial conference after review of the motion without hearing,

provided that the event shall be continued not more than once and for not more than 30 days.

**D. Trial continuances, opposed continuances and repeat continuances.** Motions to continue a trial, whether or not agreed to by the parties, may be allowed only by a Justice assigned to the civil trial session or, in the absence or unavailability of such Justice, by the Presiding Justice or other Justice designated by the Presiding Justice. Motions to continue a case management conference or pretrial conference which are opposed by any party, as well as motions to continue an event previously continued pursuant to Section VIII(C) above, shall be marked and heard as motions before a Justice. Counsel and pro se litigants shall not be excused from attending the scheduled event unless notified by the court that the event has been continued. No employee or officer of the court shall be authorized to allow continuances of trials or conferences, except as provided in this section.

/s/

-----  
Samuel E. Zoll  
Chief Justice  
District Court

Issued December 17, 1997  
Amended April 1, 2002

<b>STATEMENT OF DAMAGES</b> St. 1996, c. 358, § 5	DATE FILED (to be added by Clerk)	DOCKET NO. (to be added by Clerk)	<b>Trial Court of Massachusetts District Court Department</b>
PLAINTIFF(S)		DEFENDANT(S)	
<b>INSTRUCTIONS:</b> THIS FORM MUST BE COMPLETED AND FILED WITH THE COMPLAINT OR OTHER INITIAL PLEADING IN ALL DISTRICT COURT CIVIL ACTIONS SEEKING MONEY DAMAGES IN BARNSTABLE, BERKSHIRE, BRISTOL, DUKES, ESSEX, FRANKLIN, HAMPDEN, HAMPSHIRE, MIDDLESEX, NANTUCKET AND NORFOLK COUNTIES.		_____ DISTRICT COURT	

TORT CLAIMS	AMOUNT
A. Documented medical expenses to date: <div style="margin-left: 20px;">             1. Total hospital expenses: .....             <div style="float: right;">\$ _____</div> </div> <div style="margin-left: 20px;">             2. Total doctor expenses: .....             <div style="float: right;">\$ _____</div> </div> <div style="margin-left: 20px;">             3. Total chiropractic expenses: .....             <div style="float: right;">\$ _____</div> </div> <div style="margin-left: 20px;">             4. Total physical therapy expenses: .....             <div style="float: right;">\$ _____</div> </div> <div style="margin-left: 20px;">             5. Total other expenses (Describe): _____             <div style="float: right;">\$ _____</div> </div> <div style="clear: both;"></div> <div style="text-align: right; margin-top: 10px;"> <b>SUBTOTAL:</b> <div style="float: right;">\$ _____</div> </div>	
B. Documented lost wages and compensation to date: ..... <div style="float: right;">\$ _____</div>	
C. Documented property damages to date: ..... <div style="float: right;">\$ _____</div>	
D. Reasonably anticipated future medical and hospital expenses: ..... <div style="float: right;">\$ _____</div>	
E. Reasonably anticipated lost wages: ..... <div style="float: right;">\$ _____</div>	
F. Other documented items of damage (Describe): _____ <div style="float: right;">\$ _____</div>	
G. Brief description of Plaintiff's injury, including nature and extent of injury (Describe): _____ _____ _____	
For this form, disregard double or treble damage claims; indicate single damages only. <div style="float: right;"> <b>TOTAL:</b> \$ _____           </div>	

CONTRACT CLAIMS	AMOUNT
Provide a detailed description of claim(s): _____ _____ _____	\$ _____ \$ _____ \$ _____
For this form, disregard double or treble damage claims; indicate single damages only. <div style="float: right;"> <b>TOTAL:</b> \$ _____           </div>	

ATTORNEY FOR PLAINTIFF (OR PRO SE PLAINTIFF):	DEFENDANT'S NAME AND ADDRESS:
<div style="display: flex; justify-content: space-between;"> <span>Signature _____</span> <span>Date _____</span> </div>	
<div style="display: flex; justify-content: space-between;"> <span>Print or Type Name _____</span> <span>B.B.O.# _____</span> </div>	
Address _____	

**ORDER NISI FOR DISMISSAL  
FOR WANT OF JURISDICTIONAL AMOUNT**

DOCKET NO. \_\_\_\_\_

**Trial Court of Massachusetts  
District Court Department**



PLAINTIFF(S)

**vs.**  
DEFENDANT(S)

COURT DIVISION

**ORDER NISI FOR DISMISSAL  
FOR WANT OF JURISDICTIONAL AMOUNT  
(St. 1996, c. 358, § 5)**

To all parties:

Judgment of Dismissal for want of jurisdictional amount is hereby ORDERED conditionally in the above-captioned action based on a preliminary finding by the Court that there is a reasonable likelihood that plaintiff's damages will be in an amount in excess of \$25,000.


A copy of the Complaint and plaintiff's Statement of Damages is included herewith.


You are hereby notified that a Judgment of Dismissal will be entered 14 days from the entry of this Order Nisi, on \_\_\_\_\_, subject to the right of any party to file a response to this Order Nisi and to request a hearing on the issue prior to such date.


If any party files a timely request for hearing on the issue of dismissal for want of jurisdictional amount, all parties will be notified of the date of such hearing.


By the Court ( \_\_\_\_\_ , J.)

\_\_\_\_\_  
Clerk-Magistrate/Asst. Clerk                      Date

<b>NOTICE OF ENTRY OF JUDGMENT OF DISMISSAL FOR WANT OF JURISDICTIONAL AMOUNT</b>	DOCKET NO. _____	<b>Trial Court of Massachusetts District Court Department</b> 
PLAINTIFF(S)     <b>vs.</b> DEFENDANT(S)	COURT DIVISION _____	
<p style="text-align: center;"><b>NOTICE OF ENTRY OF JUDGMENT OF DISMISSAL FOR WANT OF JURISDICTIONAL AMOUNT (St. 1996, c. 358, § 5)</b></p> <p>To all parties:</p> <p>Judgment of Dismissal for want of jurisdictional amount under St. 1996, c. 358, § 5 was entered on the docket in the above-captioned action on _____.</p> <p style="text-align: right;">By the Court ( _____ , J.)</p> <p style="text-align: right;">_____ Clerk-Magistrate/Asst. Clerk                      Date</p>		

<b>TRANSMITTAL OF APPEAL</b> FROM JUDGMENT OF DISMISSAL FOR WANT OF JURISDICTIONAL AMOUNT	DOCKET NO.	Trial Court of Massachusetts District Court Department	
PLAINTIFF(S)     <b>VS.</b> DEFENDANT(S)		COURT DIVISION	
<p style="text-align: center;"><b>TRANSMITTAL OF APPEAL FROM JUDGMENT OF DISMISSAL FOR WANT OF JURISDICTIONAL AMOUNT (St. 1996, c. 358, § 5)</b></p> <p>To the Clerk of the Appeals Court:</p> <p>Enclosed are copies of the following documents for appeal claimed by the plaintiff on this Court's judgment of dismissal for want of jurisdictional amount under St. 1996, c. 358, § 5:</p> <ol style="list-style-type: none"><li>1. The plaintiff's Complaint</li><li>2. The plaintiff's Statement of Damages</li><li>3. Any statement of another party specifying in detail the potential damages if the plaintiff appeals</li><li>4. The judge's written findings and reasons justifying the dismissal</li><li>5. The following other documents on file (if any) relevant to the appeal:</li></ol> <div><div></div><div></div><div></div></div> <div><div></div><div></div></div>			
		<div><div></div><div></div></div>	

<b>ORDER NISI FOR DISMISSAL</b> FOR FAILURE TO ACT ON DEFAULT	DOCKET NO.	<b>Trial Court of Massachusetts</b> <b>District Court Department</b> 
PLAINTIFF(S)     <b>VS.</b> DEFENDANT(S)	COURT DIVISION	
<div><b>ORDER NISI FOR DISMISSAL</b> <b>FOR FAILURE TO ACT ON DEFAULT</b> <b>(District Court Standing Order 1-98)</b></div> <p>To all parties:</p> <p>Pursuant to District Court Standing Order 1-98, § V.B., an Order Nisi is hereby entered that the above-captioned matter be dismissed based on the pendency of such action for eight months or more without the filing of an answer or defensive motion.</p> <p>You are hereby notified that a Judgment of Dismissal will be entered 30 days from the entry of this Order Nisi, on _____, unless the plaintiff, prior to that date: (1) files a request for entry of default and default judgment in accordance with Mass. R. Civ. P. 55, or (2) files a written report that the case is active and a request that it not be dismissed.</p> <div><div>Clerk-Magistrate/Asst. Clerk</div><div>Date</div></div>		

<b>NOTICE OF ENTRY OF JUDGMENT OF DISMISSAL FOR FAILURE TO ACT ON DEFAULT</b>	DOCKET NO.	<b>Trial Court of Massachusetts District Court Department</b> 
PLAINTIFF(S)     <b>VS.</b> DEFENDANT(S)	COURT DIVISION	
<p style="text-align: center;"><b>NOTICE OF ENTRY OF JUDGMENT OF DISMISSAL FOR FAILURE TO ACT ON DEFAULT (District Court Standing Order 1-98)</b></p> <p>To all parties:</p> <p>Pursuant to the provisions of District Court Standing Order 1-98, § V.B., Judgment of Dismissal for failure to act on default was entered on the docket in the above-captioned action on _____.</p> <div style="text-align: right; margin-top: 100px;"><div style="display: inline-block; width: 60%; border-bottom: 1px solid black; margin-bottom: 5px;"></div>Clerk-Magistrate/Asst. Clerk</div> <div style="display: inline-block; width: 35%; border-bottom: 1px solid black; margin-bottom: 5px;"></div> Date		

**NOTICE OF CASE MANAGEMENT  
CONFERENCE**

DOCKET NO. \_\_\_\_\_

**Trial Court of Massachusetts  
District Court Department**

PLAINTIFF(S) \_\_\_\_\_

**VS.**  
DEFENDANT(S) \_\_\_\_\_

COURT DIVISION \_\_\_\_\_

Pursuant to Mass. R. Civ. P. 16 and G.L. c. 221, § 62C, counsel for all parties to this action are **ORDERED** to appear at a case management conference on \_\_\_\_\_

at \_\_\_\_\_ at the \_\_\_\_\_ District Court, \_\_\_\_\_  
TIME COURT COURTROOM  
to report on the status of this action.

**Agenda.** The purpose of the case management conference is to determine the trial readiness of the case; offer and conduct early-intervention alternative dispute resolution; establish deadlines for discovery, amendment of pleadings, addition of parties, dispositive motions, and disclosure of expert witnesses; resolve any discovery dispute and address pending motions; review any proposed case management orders submitted by any party; enter case management orders as appropriate; and assign a firm trial date for cases ready for trial or a firm pretrial conference date for all cases not ready for trial.

**Obligations of Counsel.** Counsel shall be familiar with the facts of the case and shall have authority to settle and to select firm dates for trial or pretrial conference. Clients or persons with settlement authority shall be available for telephone consultation with counsel during the case management conference. Counsel shall serve any proposed case management orders and motions to opposing counsel in advance of the case management conference. Counsel are **not** required to prepare any memorandum for the case management conference.

**Continuances.** Request for continuances of the case management conference for good cause shall be addressed to the undersigned in writing and shall list all dates in the next thirty days that counsel is unavailable for the case management conference.

**Liaison.** Please call \_\_\_\_\_ at \_\_\_\_\_, with any questions  
CONTACT PERSON TELEPHONE NO.  
or to report any settlement.

\_\_\_\_\_  
Justice\_\_\_\_\_  
Date

<b>NOTICE OF PRETRIAL CONFERENCE</b>	DOCKET NO. _____	<b>Trial Court of Massachusetts District Court Department</b>
PLAINTIFF(S)   <b>VS.</b> DEFENDANT(S)	COURT DIVISION _____	

A pretrial/conciliation conference will be held on \_\_\_\_\_  
 at \_\_\_\_\_ at the \_\_\_\_\_ District Court, \_\_\_\_\_.  

 TIME COURT COURTROOM

Pursuant to Mass. R. Civ. P. 16, the parties are **ORDERED** as follows:

1. **Settlement.** Plaintiff counsel shall contact opposing counsel to discuss settlement in advance of the conference. Defense counsel shall, after conferring with the defendant(s), respond to any settlement demand made by the plaintiff(s). Counsel for each party shall discuss with their client(s) the estimated costs of further litigation through trial, and shall certify in the pretrial memorandum that such discussion has occurred.
2. **Memorandum.** At least three weeks before the conference, plaintiff counsel shall prepare and serve a draft joint pretrial memorandum to opposing counsel, consisting of **no more than 5 pages**, setting forth: (A) a concise summary of the claim and defenses; (B) a list of witnesses, including experts, and a concise summary of the testimony anticipated from each witness; (C) facts established by pleadings, stipulation or admission; (D) an itemized list of special damages, if any; (E) the estimated length of trial; (F) certification by each counsel that their client(s) have been apprised of estimated litigation costs. At least two weeks before the conference, defense counsel shall prepare and serve any revisions to such memorandum. Counsel for all parties shall thereafter confer and, at least one week before the conference, file a joint pre-trial memorandum with the court.
3. **Authority.** Counsel are expected to have full authority to settle and file stipulations of dismissal or agreements for judgment at the pretrial conference. All parties shall be available for telephone consultation by counsel during the pretrial conference.
4. **Continuances.** Requests for continuances of the pretrial conference shall be made in writing and addressed to the attention of \_\_\_\_\_.  
NAME AND TITLE
 Requests shall specify the next pretrial conference dates that all counsel are available.
5. **Trial Date.** A firm trial date will be set by the Court and counsel if the case does not settle at the pretrial conference.
6. **Sanctions.** Failure to comply with this order, or failure to appear at the pretrial conference, may result in sanctions including but not limited to assessment of costs, entry of default or dismissal.
7. **Liaison.** Please refer all questions, as well as reports of settlement in advance of the pre-trial conference, to \_\_\_\_\_ at \_\_\_\_\_.  
NAME AND TITLE TELEPHONE NO.

\_\_\_\_\_  
Justice

\_\_\_\_\_  
Date



TRIAL ORDER	DOCKET NO. _____	Trial Court of Massachusetts District Court Department
PLAINTIFF(S)      VS. DEFENDANT(S)	COURT DIVISION _____	
<p>After pretrial/conciliation conference and upon scheduling of this matter for trial on _____</p> <p style="text-align: right; margin-right: 100px;">TRIAL DATE</p> <p>at _____ before the Court ( _____, J.) it is <b>ORDERED</b> as follows:</p> <p style="text-align: center; margin-top: 10px;"> <span style="margin-right: 150px;">TIME</span> <span>JUDGE'S NAME</span> </p> <ol style="list-style-type: none"> <li>1. <b>Witness Lists.</b> Counsel for each party shall submit a list of witnesses expected to testify at trial, containing the name and address of each prospective witness, to the trial judge at the beginning of the trial. Persons not included in such lists may be precluded from testifying, in the discretion of the trial judge.</li> <li>2. <b>Agreed Exhibits.</b> Counsel for each party shall confer in advance of the trial for the purpose of agreeing to exhibits for trial. All agreed exhibits shall be pre-marked by counsel with exhibit labels bearing numerical designations (e.g., Exhibit 1, Exhibit 2, etc.) Counsel shall submit a list of Agreed Exhibits, containing the exhibit numbers and a summary description of each exhibit, to the trial judge at the beginning of the trial.</li> <li>3. <b>Proposed Exhibits.</b> All proposed exhibits on which counsel do not agree shall be pre-marked by counsel for the offering party with exhibit labels bearing alphabetical designations for identification (e.g., Plaintiff's Exhibit A for ID, Defendant's Exhibit A for ID, etc.) Each counsel shall submit a list of proposed exhibits, containing the exhibit letters and summary descriptions of the exhibits, to the trial judge at the beginning of the trial. Any exhibit offered at trial which is neither agreed to nor identified on the proposed exhibits lists may be precluded, in the discretion of the trial judge.</li> <li>4. <b>Stipulations.</b> Counsel for each party shall confer in advance of the trial for the purpose of stipulating to all material facts which are not in dispute. Counsel shall submit a list of any stipulations to the trial judge at the beginning of the trial.</li> <li>5. <b>Audio-Visual Expert Witness Depositions for Trial.</b> To reduce the expense of litigation and to avoid delay of trial because of unavailability of expert witnesses, leave is hereby granted for any party, upon notice to opposing counsel and in accordance with Mass. R. Civ. P. 30A(m), to conduct audio-visual depositions of their treating physician or other expert witnesses in lieu of oral testimony at trial. Notwithstanding Mass. R. Civ. P. 30A(m)(2) &amp; (4), notice of the audio-visual deposition may be served simultaneously with service of the witness' curriculum vitae and written report, and evidentiary objections shall be filed with the trial judge at the beginning of the trial. Any objections to this procedure shall be filed and heard as discovery motions in advance of the trial date.</li> <li>6. <b>Summaries of Voluminous Exhibits.</b> Counsel are encouraged to prepare summaries of voluminous exhibits, such as medical records and bills, to assist the trial judge's review of the facts. See Proposed Mass. R. Evid. 1006 (1980).</li> <li>7. <b>Non-Massachusetts Authorities.</b> Counsel who submit any requested rulings of law, jury instructions or memoranda of law which cite federal or other non-Massachusetts cases and statutes are requested to append copies of such cases or statutes for the convenience of the trial judge.</li> <li>8. <b>Proposed Jury Instructions.</b> In cases to be tried to a jury, counsel are directed to file any requested jury instructions with the court before the trial begins, without prejudice to supplementation of such request at the close of the evidence. For the convenience of the trial judge, requested jury instructions shall be consecutively numbered with instructions concerning separate topics listed on separate pages.</li> </ol> <p style="text-align: center; margin-top: 20px;">(SEE REVERSE SIDE FOR ADDITIONAL INSTRUCTIONS)</p>		

9. **Continuances.** Any motions for continuance of the trial date shall include affidavits of counsel in accordance with Mass. R. Civ. P. 40 and shall be sent directly to the attention of \_\_\_\_\_  
NAME AND TITLE  
to expedite decision by the Justice assigned to the Civil Trial Session or, if that Justice is not available, by the First Justice. Trial dates may be continued for good cause only.

10. **Settlement.** Counsel in cases which settle before the trial date shall notify \_\_\_\_\_  
NAME AND TITLE  
at \_\_\_\_\_ to permit scheduling of other cases for trial.  
TELEPHONE NO.

\_\_\_\_\_  
Justice

\_\_\_\_\_  
Date